



Criminal Law (Consolidation) (Scotland) Act 1995

1995 CHAPTER 39

PART I

SEXUAL OFFENCES

Incest and related offences

1 Incest.

- (1) Any male person who has sexual intercourse with a person related to him in a degree specified in column 1 of the Table set out at the end of this subsection, or any female person who has sexual intercourse with a person related to her in a degree specified in column 2 of that Table, shall be guilty of incest, unless the accused proves that he or she—
- did not know and had no reason to suspect that the person with whom he or she had sexual intercourse was related in a degree so specified; or
 - did not consent to have sexual intercourse, or to have sexual intercourse with that person; or
 - was married to that person, at the time when the sexual intercourse took place, by a marriage entered into outside Scotland and recognised as valid by Scots law.

Table

DEGREES OF RELATIONSHIP

Column 1	Column 2
1. Relationships by consanguinity	
Mother	Father

Status: Point in time view as at 01/12/2010.

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Daughter	Son
Grandmother	Grandfather
Grand-daughter	Grandson
Sister	Brother
Aunt	Uncle
Niece	Nephew
Great grandmother	Great grandfather
Great grand-daughter	Great grandson

2. Relationships by adoption

Adoptive mother or former adoptive mother.	Adoptive father or former adoptive father.
Adopted daughter or former adopted daughter.	Adopted son or former adopted son.

[^{F1}3. Relationships by virtue of Part 2 of the Human Fertilisation and Embryology Act 2008

Mother	Father
Daughter	Son
Second female parent by virtue of section 42 or 43 of that Act]	

- (2) For the purpose of this section, a degree of relationship exists in the case of a degree specified in paragraph 1 of the Table—
- whether it is of the full blood or the half blood; and
 - even where traced through or to any person whose parents are not or have not been married to one another.
- (3) For the avoidance of doubt sexual intercourse between persons who are not related to each other in a degree referred to in subsection (1) above is not incest.

Textual Amendments

- F1** S. 1(1) Table: para. 3 inserted (6.4.2009 for specified purposes and otherwise 1.9.2009) by [Human Fertilisation and Embryology Act 2008 \(c. 22\)](#), ss. 56, 68(2), [Sch. 6 para. 55](#); [S.I. 2009/479](#), [art. 6\(1\)\(e\)\(2\)](#) (as amended by [S.I. 2009/2232](#), [art. 3](#))

2 Intercourse with step-child.

Any step-parent or former step-parent who has sexual intercourse with his or her step-child or former step-child shall be guilty of an offence if that step-child is either under the age of 21 years or has at any time before attaining the age of 18 years lived in the same household and been treated as a child of his or her family, unless the accused proves that he or she—

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- (a) did not know and had no reason to suspect that the person with whom he or she had sexual intercourse was a step-child or former step-child; or
- (b) believed on reasonable grounds that that person was of or over the age of 21 years; or
- (c) did not consent to have sexual intercourse, or to have sexual intercourse with that person; or
- (d) was married to that person, at the time when the sexual intercourse took place, by a marriage entered into outside Scotland and recognised as valid by Scots law.

3 Intercourse of person in position of trust with child under 16.

F2

Textual Amendments

F2 S. 3 repealed (1.12.2010) by Sexual Offences (Scotland) Act 2009 (asp 9), ss. 61(2), 62(2), sch. 6; S.S.I. 2010/357, art. 2(a)

4 Proceedings and penalties for offences under sections 1 [F3 and 2].

- (1) Proceedings in respect of an offence under section 1 [F4 or 2] of this Act may be brought on indictment or, if the Lord Advocate so directs, on a summary complaint before the sheriff.
- (2) Summary proceedings in pursuance of this section may be commenced at any time within the period of 6 months from the date on which evidence sufficient in the opinion of the Lord Advocate to justify the proceedings comes to his knowledge.
- (3) Subsection (3) of section 136 of the ^{M1}Criminal Procedure (Scotland) Act 1995 (date of commencement of summary proceedings) shall have effect for the purposes of subsection (2) above as it has effect for the purposes of that section.
- (4) For the purposes of subsection (2) above, a certificate of the Lord Advocate as to the date on which the evidence in question came to his knowledge is conclusive evidence of the date on which it did so.
- (5) Subject to subsection (6) below, a person guilty of an offence under section 1 [F4 or 2] of this Act shall be liable—
 - (a) on conviction on indictment, to imprisonment for any term of imprisonment up to and including life imprisonment; and
 - (b) on summary conviction, to imprisonment for a term not exceeding 3 months.
- (6) Before passing sentence on a person convicted of any such offence, the court shall—
 - (a) obtain information about that person’s circumstances from an officer of a local authority or otherwise and consider that information; and
 - (b) take into account any information before it which is relevant to his character and to his physical and mental condition.
- (7) In subsection (6) above, “local authority” has the meaning assigned to it by section 1(2) of the ^{M2}Social Work (Scotland) Act 1968.

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Textual Amendments

- F3** S. 4: words in section title substituted (1.12.2010) by [Sexual Offences \(Scotland\) Act 2009 \(asp 9\)](#), ss. 61(1), 62(2), [sch. 5 para. 1\(3\)](#); S.S.I. 2010/357, [art. 2\(a\)](#)
- F4** Words in s. 4(1)(5) substituted (1.12.2010) by [Sexual Offences \(Scotland\) Act 2009 \(asp 9\)](#), ss. 61(1), 62(2), [sch. 5 para. 1\(2\)](#); S.S.I. 2010/357, [art. 2\(a\)](#)

Modifications etc. (not altering text)

- C1** S. 4(2)-(4) applied (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), ss. 319, 333; S.S.I. 2005/161, [art. 3](#) (as amended by S.S.I. 2005/375, [art. 2](#))

Marginal Citations

- M1** 1995 c.46.
- M2** 1968 c.49.

Offences against children

5 Intercourse with girl under 16.

F5

Textual Amendments

- F5** S. 5 repealed (1.12.2010) by [Sexual Offences \(Scotland\) Act 2009 \(asp 9\)](#), ss. 61(2), 62(2), [sch. 6](#); S.S.I. 2010/357, [art. 2\(a\)](#)

6 Indecent behaviour towards girl between 12 and 16.

F6

Textual Amendments

- F6** S. 6 repealed (1.12.2010) by [Sexual Offences \(Scotland\) Act 2009 \(asp 9\)](#), ss. 61(2), 62(2), [sch. 6](#); S.S.I. 2010/357, [art. 2\(a\)](#)

Procuring, prostitution etc.

7 Procuring.

- (1) Any person who procures or attempts to procure—
- (a) any woman under 21 years of age or girl to have unlawful sexual intercourse with any other person or persons in any part of the world; or
 - (b) any woman or girl to become a common prostitute in any part of the world; or
 - (c) any woman or girl to leave the United Kingdom, with intent that she may become an inmate of or frequent a brothel elsewhere; or
 - (d) any woman or girl to leave her usual place of abode in the United Kingdom, with intent that she may, for the purposes of prostitution, become an inmate of or frequent a brothel in any part of the world,

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shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or on summary conviction to imprisonment for a term not exceeding three months.

(2) ^{F7}

(3) ^{F7}

(4) A constable may arrest without a warrant any person whom he has good cause to suspect of having committed, or of attempting to commit, any offence under subsection (1) above.

Textual Amendments

F7 S. 7(2)(3) repealed (1.12.2010) by [Sexual Offences \(Scotland\) Act 2009 \(asp 9\)](#), ss. 61(2), 62(2), [sch. 6](#); S.S.I. 2010/357, [art. 2\(a\)](#)

8 Abduction and unlawful detention.

(1) ^{F8}

(2) ^{F8}

(3) Any person who detains any woman or girl against her will—

(a) in or upon any premises with intent that she may have unlawful sexual intercourse with men or with a particular man; or

(b) in any brothel,

shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or on summary conviction to imprisonment for a term not exceeding three months.

(4) Where a woman or girl is in or upon any premises for the purpose of having unlawful sexual intercourse, or is in a brothel, a person shall be deemed to detain such woman or girl in or upon such premises or brothel if, with intent to compel or induce her to remain in or upon the premises or brothel, he withholds from her any wearing apparel or other property belonging to her or, where wearing apparel has been lent or otherwise supplied to the woman or girl by or by the direction of such person, he threatens the woman or girl with legal proceedings if she takes away with her the wearing apparel so lent or supplied.

(5) No legal proceedings, whether civil or criminal, shall be taken against a woman or girl mentioned in subsection (4) above for taking away or being found in possession of any such wearing apparel as was necessary to enable her to leave such premises or brothel mentioned in that subsection.

Textual Amendments

F8 S. 8(1)(2) repealed (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), ss. 19(2)(a), 89; S.S.I. 2003/288, [art. 2](#), [Sch.](#)

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9 Permitting girl to use premises for intercourse.

- (1) Any person who, being the owner or occupier of any premises, or having, or acting or assisting in, the management or control of any premises, induces or knowingly suffers any girl of such age as is mentioned in this subsection to resort to or be in or upon such premises for the purpose of having unlawful sexual intercourse with men or with a particular man—
- (a) if such girl is under the age of 13 years, shall be liable on conviction on indictment to imprisonment for life; and
 - (b) if such girl is of or over the age of 13 years and under the age of 16 years, shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or on summary conviction to imprisonment for a term not exceeding three months.
- (2) It shall be a defence to a charge [^{F9}in proceedings] under this section that the person so charged ^{F10}. . . had reasonable cause to believe that the girl was of or over the age of 16 years.
- [^{F11}(2A) But the defence under subsection (2) is not available to the person so charged if—
- (a) that person has previously been charged by the police with a relevant sexual offence; or
 - (b) there is in force in respect of that person a risk of sexual harm order.]
- (3) In subsection [^{F12}(2A) above—
- (a) “a relevant sexual offence” has the same meaning as in section 39(5)(a) of the Sexual Offences (Scotland) Act 2009 (asp 9); and
 - (b) “a risk of sexual harm order” has the same meaning as in section 39(5)(b) of that Act.]

Textual Amendments

- F9** Words in s. 9(2) inserted (1.12.2010) by Sexual Offences (Scotland) Act 2009 (asp 9), ss. 61(1), 62(2), **sch. 5 para. 1(4)(a)(i)**; S.S.I. 2010/357, **art. 2(a)**
- F10** Words in s. 9(2) omitted (1.12.2010) by Sexual Offences (Scotland) Act 2009 (asp 9), ss. 61(1), 62(2), **sch. 5 para. 1(4)(a)(ii)**; S.S.I. 2010/357, **art. 2(a)**
- F11** S. 9(2A) inserted (1.12.2010) by Sexual Offences (Scotland) Act 2009 (asp 9), ss. 61(1), 62(2), **sch. 5 para. 1(4)(b)**; S.S.I. 2010/357, **art. 2(a)**
- F12** Words in s. 9(3) substituted (1.12.2010) by Sexual Offences (Scotland) Act 2009 (asp 9), ss. 61(1), 62(2), **sch. 5 para. 1(4)(c)**; S.S.I. 2010/357, **art. 2(a)**

10 Seduction, prostitution, etc., of girl under 16.

- (1) If any person having parental responsibilities (within the meaning of section 1(3) of the ^{M3}Children (Scotland) Act 1995), in relation to, or having charge or care of a girl under the age of 16 years causes or encourages—
- (a) the seduction or prostitution of;
 - (b) unlawful sexual intercourse with; or
 - (c) the commission of an indecent assault upon,
- her he shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or on summary conviction to imprisonment for a term not exceeding three months.

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- (2) For the purposes of this section, a person shall be deemed to have caused or encouraged the matters mentioned in paragraphs (a) to (c) of subsection (1) above upon a girl who has been seduced or indecently assaulted, or who has had unlawful sexual intercourse or who has become a prostitute, if he has knowingly allowed her to consort with, or to enter or continue in the employment of, any prostitute or person of known immoral character.
- (3) Subsections (1) and (2) above shall apply to a contravention of [F13 sections 19 to 26 and 29 to 36 of the Sexual Offences (Scotland) Act 2009 (asp 9) (certain sexual offences relating to children)] in like manner as they apply to an indecent assault, and any reference to the commission of such an assault or to being indecently assaulted shall be construed accordingly.
- (4) Where on the trial of any offence under this Part of this Act it is proved to the satisfaction of the court that the seduction or prostitution of a girl under the age of 16 years has been caused, encouraged or favoured by her father, mother or guardian it shall be in the power of the court to divest such person of all authority over her, and to appoint any person or persons willing to take charge of such girl to be her guardian until she has attained the age of 21 years, or such lower age as the court may direct.
- (5) The High Court of Justiciary shall have the power from time to time to rescind or vary an order under subsection (4) above by the appointment of any other person or persons as such guardian, or in any other respect.

Textual Amendments

F13 Words in s. 10(3) substituted (1.12.2010) by [Sexual Offences \(Scotland\) Act 2009 \(asp 9\)](#), ss. 61(1), 62(2), [sch. 5 para. 1\(5\)](#); S.S.I. 2010/357, [art. 2\(a\)](#)

Marginal Citations

M3 1995 c.36.

11 Trading in prostitution and brothel-keeping.

- (1) Every male person who—
 - (a) knowingly lives wholly or in part on the earnings of prostitution; or
 - (b) in any public place persistently solicits or importunes for immoral purposes,shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or on summary conviction to imprisonment for a term not exceeding six months.
- (2) If it is made to appear to a court of summary jurisdiction by information on oath that there is reason to suspect that any house or any part of a house is used by a female for purposes of prostitution, and that any male person residing in or frequenting the house is living wholly or in part on the earnings of the prostitute, the court may issue a warrant authorising a constable to enter and search the house and to arrest that male person.
- (3) Where a male person is proved to live with or to be habitually in the company of a prostitute, or is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that he is aiding, abetting or compelling her prostitution with any other person, or generally, he shall, unless he can

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satisfy the court to the contrary, be deemed to be knowingly living on the earnings of prostitution.

- (4) Every female who is proved to have, for the purposes of gain, exercised control, direction or influence over the movements of a prostitute in such a manner as to show that she is aiding, abetting or compelling her prostitution with any other person, or generally, shall be liable to the penalties set out in subsection (1) above.
- (5) Any person who—
- (a) keeps or manages or acts or assists in the management of a brothel; or
 - (b) being the tenant, lessee, occupier or person in charge of any premises, knowingly permits such premises or any part thereof to be used as a brothel or for the purposes of habitual prostitution; or
 - (c) being the lessor or landlord of any premises, or the agent of such lessor or landlord, lets the same or any part thereof with the knowledge that such premises or some part thereof are or is to be used as a brothel, or is wilfully a party to the continued use of such premises or any part thereof as a brothel,
- shall be guilty of an offence.
- (6) A person convicted of an offence under subsection (5) above shall be liable—
- (a) in the sheriff court to a fine not exceeding level 4 on the standard scale or to imprisonment for a term not exceeding six months; and
 - (b) in the district court to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding three months,
- or, in either case, to both such fine and imprisonment.

12 Allowing child to be in brothel.

- (1) If any person having parental responsibilities (within the meaning of section 1(3) of the ^{M4}Children (Scotland) Act 1995), in relation to, or having charge or care of a child who has attained the age of four years and is under the age of 16 years, allows that child to reside in or to frequent a brothel, he shall be liable on conviction on indictment, or on summary conviction, to a fine not exceeding level 2 on the standard scale or alternatively, or in default of payment of such a fine, or in addition thereto, to imprisonment for a term not exceeding six months.
- (2) Nothing in this section shall affect the liability of a person to be indicted under section 9 of this Act, but upon the trial of a person under that section it shall be lawful for the jury, if they are satisfied that he is guilty of an offence under this section, to find him guilty of that offence.

Marginal Citations

M4 1995 c.36.

[^{F14}12A Sections 11(5) and 12: further provision

- (1) Premises shall be treated for the purposes of sections 11(5) and 12 of this Act as a brothel if people resort to them for the purposes of homosexual acts in circumstances in which resort to them for heterosexual practices would have led to the premises being treated as a brothel for the purposes of those sections.

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- (2) For the purposes of this section, a homosexual act is an act of engaging in sexual activity by one male person with another male person; and an activity is sexual in any case if a reasonable person would, in all the circumstances of the case, consider it to be sexual.]

Textual Amendments

F14 S. 12A inserted (1.12.2010) by Sexual Offences (Scotland) Act 2009 (asp 9), ss. 61(1), 62(2), **sch. 5 para. 1(6)**; S.S.I. 2010/357, **art. 2(a)**

[^{F15}Living on earnings of another from male prostitution]

Textual Amendments

F15 Cross-heading substituted (1.12.2010) by virtue of Sexual Offences (Scotland) Act 2009 (asp 9), ss. 61(1), 62(2), **sch. 5 para. 1(7)**; S.S.I. 2010/357, **art. 2(a)**

13 [^{F16}Living on earnings of another from male prostitution]

- (1) ^{F17}
- (2) ^{F17}
- (3) ^{F18}
- (4) ^{F17}
- (5) ^{F17}
- (6) ^{F17}
- (7) ^{F17}
- (8) ^{F17}
- (8A) ^{F17}
- (9) A person who knowingly lives wholly or in part on the earnings of another from male prostitution ^{F19} . . . shall be liable—
- (a) on summary conviction to imprisonment for a term not exceeding six months;
or
- (b) on conviction on indictment to imprisonment for a term not exceeding two years.
- (10) ^{F20}
- (11) ^{F20}

Textual Amendments

F16 S. 13: section title substituted (1.12.2010) by Sexual Offences (Scotland) Act 2009 (asp 9), ss. 61(1), 62(2), **sch. 5 para. 1(8)**; S.S.I. 2010/357, **art. 2(a)**

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- F17** S. 13(1)-(8A) repealed (1.12.2010) by Sexual Offences (Scotland) Act 2009 (asp 9), ss. 61(2), 62(2), **sch. 6**; S.S.I. 2010/357, **art. 2(a)**
- F18** S. 13(3) repealed (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 331(2), 333, **sch. 5 Pt. 1**; S.S.I. 2005/161, **art. 3** (as amended by S.S.I. 2005/375, art. 2)
- F19** Words in s. 13(9) omitted (1.12.2010) by Sexual Offences (Scotland) Act 2009 (asp 9), ss. 61(1), 62(2), **sch. 5 para. 1(9)**; S.S.I. 2010/357, **art. 2(a)**
- F20** S. 13(10)(11) repealed (1.12.2010) by Sexual Offences (Scotland) Act 2009 (asp 9), ss. 61(2), 62(2), **sch. 6**; S.S.I. 2010/357, **art. 2(a)**

Miscellaneous

14 Power, on indictment for rape, etc., to convict of other offences.

F21

Textual Amendments

- F21** S. 14 repealed (1.12.2010) by Sexual Offences (Scotland) Act 2009 (asp 9), ss. 61(2), 62(2), **sch. 6**; S.S.I. 2010/357, **art. 2(a)**

15 Defence to charge of indecent assault.

F22

Textual Amendments

- F22** S. 15 repealed (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 19(2)(b)**, 89; S.S.I. 2003/288, **art. 2**, Sch.

16 Power of search.

- (1) If it appears to a justice on information on oath by any parent, relative or guardian of any woman or girl, or any other person who, in the opinion of the justice, *is bona fide* acting in the interest of any woman or girl, that there is reasonable cause to suspect that such woman or girl is unlawfully detained for immoral purposes by any person in any place within the jurisdiction of the justice, he may issue a warrant authorising any person named therein to search for, and, when found, to take to and detain in a place of safety, such woman or girl until she can be brought before a justice, and the justice before whom such woman or girl is brought may cause her to be delivered up to her parents or guardians, or otherwise dealt with as circumstances may permit and require.
- (2) The justice issuing such warrant may, by the same or any other warrant, cause any person accused of so unlawfully detaining such woman or girl to be apprehended and brought before a justice, and proceedings to be taken for punishing such person according to law.
- (3) A woman or girl shall be deemed to be unlawfully detained for immoral purposes if she is so detained for the purpose of having unlawful sexual intercourse with men or with a particular man, and she—
 - (a) is under the age of 16 years; or

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- (b) if of or over the age of 16 years and under the age of 18 years, is so detained against her will, or against the will of her father or mother or of any other person having the lawful care or charge of her; or
 - (c) if of or over the age of 18 years, is so detained against her will.
- (4) Any person authorised by warrant under this section to search for any woman or girl so detained as aforesaid may enter (if need be by force) any house, building, or other place specified in the warrant, and may remove the woman or girl therefrom.
- (5) Every warrant issued under this section shall be addressed to and executed by a constable, who shall be accompanied by the parent, relative, or guardian or other person giving the information, if that person so desires, unless the justice directs otherwise.
- (6) In this section, “justice” has the same meaning as in section 307 of the ^{M5}Criminal Procedure (Scotland) Act 1995.

Marginal Citations

M5 1995 c.46.

16A Conspiracy or incitement to commit certain sexual acts outside the United Kingdom.

F23

Textual Amendments

F23 S. 16A repealed (1.12.2010) by Sexual Offences (Scotland) Act 2009 (asp 9), ss. 61(2), 62(2), sch. 6; S.S.I. 2010/357, art. 2(a)

16B Commission of certain sexual acts outside the United Kingdom.

F24

Textual Amendments

F24 S. 16B repealed (1.12.2010) by Sexual Offences (Scotland) Act 2009 (asp 9), ss. 61(2), 62(2), sch. 6; S.S.I. 2010/357, art. 2(a)

17 Liability to other criminal proceedings.

This Part of this Act shall not exempt any person from any proceedings for an offence which is punishable at common law, or under any enactment other than this Part, but nothing in this Part of this Act shall enable a person to be punished twice for the same offence.

Status:

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